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[PUBLIC—No. 159—73D CONGRESS]

[H.R. 6525]

AN ACT

To amend the Act known as the "Perishable Agricultural Commodities Act, 1930", approved June 10, 1930.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Act known as the "Perishable Agricultural Commodities Act, 1930", approved June 10, 1930, be, and hereby is, amended as hereinafter set forth:

That subsection 6 of section 1 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

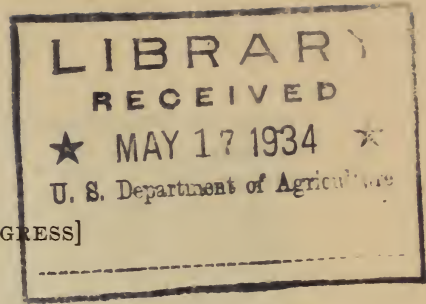
"(6) The term 'dealer' means any person engaged in the business of buying or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a 'dealer' in respect of sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a 'dealer' in respect of any such commodity in any calendar year until his purchases of such commodity in carloads in such year are in excess of twenty; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a 'dealer' whether or not the canned or processed product is to be shipped in interstate or foreign commerce. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer.' As used in this paragraph, the term 'in carloads' includes wholesale or jobbing quantities as defined for any such commodity by the Secretary:"

SEC. 2. That subsection 2 of section 2 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer;"

SEC. 3. That subsection 4 of section 2 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving or concerning the condition of the market for any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned in such commerce by such dealer; or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or



refuse truly and correctly to account promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had;"

SEC. 4. That paragraph (b) of section 4 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(b) The Secretary shall refuse to issue a license to an applicant if he finds (1) that the applicant has previously, at any time within two years, been responsible in whole or in part for any violation of the provisions of section 2 for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office, or, in the case of a partnership, had any share or interest, was revoked, or (2) if he finds after notice and hearing that at any time within two years said applicant was responsible in whole or in part for any flagrant or repeated violations of the provisions of section 2, or (3) in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, had previously, at any time within two years, been responsible in whole or in part for any violations of the provisions of section 2 for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked, or if he finds after notice and hearing that at any time within two years said applicant was responsible in whole or in part for any flagrant or repeated violations of the provisions of section 2, or (4) that the applicant, subject to his right of appeal under section 7(b), has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office, or, in case the applicant is a partnership, association, or corporation, that any individual holding any office, or in the case of a partnership, having any interest or share in the applicant, subject to his right of appeal under section 7(b), has failed, except in the case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office. Notwithstanding the foregoing provisions, the Secretary, in the case of such applicant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of this Act, and that he will pay all reparation orders which may previously have been issued against him for violations, or which may be issued against him within two years following the date of the license, subject to his right of appeal under section 7(b), but such license shall not be issued before the expiration of one year from the date of such revocation, or from the date of the Secretary's finding that applicant has been responsible, in whole or in part, for any flagrant or repeated violation of section 2;"

SEC. 5. That a new paragraph lettered (c) and reading as follows is hereby added to section 4 of the Perishable Agricultural Commodities Act, 1930:



"(c) The Secretary may, after thirty days' notice and an opportunity for a hearing, revoke the license of any commission merchant, dealer, or broker, who after the date given in such notice continues to employ in any responsible position any individual whose license was revoked or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked within one year prior to the date of such notice. Employment of such individual by a licensee in any responsible position after one year following the revocation of any such license shall be conditioned upon the filing by the employing licensee of a bond or other satisfactory assurance that its business will be conducted in accordance with the provisions of this Act;"

SEC. 6. That a new paragraph lettered (d) and reading as follows is hereby added to section 4 of the Perishable Agricultural Commodities Act, 1930:

"(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending investigation, if the Secretary believes that the application contains any material false or misleading statement or involves misrepresentation, concealment or withholding of facts respecting any violation of the Act by any officer, agent, or employee. If, after investigation, the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for a hearing within sixty days from the date of the application to show cause why a license should not be refused. If after hearing the Secretary finds that the application contains a material false or misleading statement made by the applicant or by its representative on its behalf or involves a misrepresentation, concealment or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary shall refuse to issue a license to the applicant."

SEC. 7. That a new paragraph lettered (e) and reading as follows is hereby added to section 4 of the Perishable Agricultural Commodities Act, 1930:

"(e) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of this section."

SEC. 8. That paragraph (c) of section 6 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a

duly authorized examiner of the Secretary in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of \$500 a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact";

SEC. 9. That paragraph (d) of section 6 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(d) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$500 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$500 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2;"

SEC. 10. That paragraph (e) of section 6 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(e) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail;"

SEC. 11. That paragraph (b) of section 7 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"(b) If any commission merchant, dealer, or broker does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent state of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit;"

SEC. 12. That a new paragraph lettered (c) and reading as follows is hereby added to section 7 of the Perishable Agricultural Commodities Act, 1930:

"(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the



United States for the district in which said hearing was held. Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court; "

SEC. 13. That a new paragraph lettered (d) and reading as follows is hereby added to section 7 of the Perishable Agricultural Commodities Act, 1930:

"(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment; "

SEC. 14. That a new paragraph lettered (b) and reading as follows is hereby added to section 8 of the Perishable Agricultural Commodities Act, 1930:

"(b) In addition to being subject to the penalties provided by section 3 (a) of this Act, any commission merchant, dealer, or broker, who engages in or operates such business without an unsuspended and unrevoked license from the Secretary, shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without an unsuspended and unrevoked license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license."

SEC. 15. That section 14 of the Perishable Agricultural Commodities Act, 1930, is hereby amended to read as follows:

"SEC. 14. The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies, and/or any person, whether operating in one

or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the disbursing clerk of the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That certificates issued by such inspectors shall be received in all courts of the United States and in all proceedings under this Act as prima-facie evidence of the truth of the statements therein contained."

Approved, April 13, 1934.





